IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ELYJAH ANTONIO BEECHUM,
Appellant.

No. 2 CA-CR 2013-0126
Filed January 28, 2014

Appeal from the Superior Court in Pinal County
No. S1100CR201100827
The Honorable Bradley M. Soos, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellee

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By Eric S. Rothblum
Counsel for Appellant

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Howard concurred.

M I L L E R, Judge:

¶1 Elyjah Beechum was convicted after a jury trial of one count of discharging a firearm at a non-residential structure and two counts of aggravated assault. Beechum argues the trial court erred in denying his motion for a judgment of acquittal and there was a risk the verdicts for aggravated assault were non-unanimous. Finding no error, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining the jury's verdicts. *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In April 2011, T.T. and P.G. were traveling in a vehicle on a residential street when Beechum fired gunshots at them. T.T. and P.G. went to a police station to report the incident. Both victims identified Beechum as the shooter to police. At trial, however, the victims recanted their previous identification of Beechum as the shooter.

¶3 A jury convicted Beechum on all counts and he was sentenced to concurrent 7.5-year sentences for the aggravated assault counts followed by five years of supervised intensive probation for discharging a firearm at a non-residential structure. This timely appeal followed.

Sufficiency of the Evidence

¶4 Beechum argues the trial court erred in denying his motion for a judgment of acquittal made at the conclusion of the state's case. *See* Ariz. R. Crim. P. 20. He generally contends the lack of in-court identification or physical evidence resulted in a

speculative case against him. A motion for a judgment of acquittal under Rule 20 shall be granted where "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). We review the trial court's denial of a Rule 20 motion de novo, "viewing the evidence in a light most favorable to sustaining the verdict," *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993), and determining whether "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,'" *State v. West*, 226 Ariz. 559, ¶ 16, 250 P.3d 1188, 1191 (2011), *quoting State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). "Substantial evidence," as required under Rule 20, may be either direct or circumstantial. *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191. Further, "'[w]hen reasonable minds may differ on inferences drawn from the facts, the case must be submitted to the jury, and the trial judge has no discretion to enter a judgment of acquittal.'" *Id.* ¶ 18, *quoting State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

¶5 Beechum argues the lack of in-court identification was fatal to the state's case. Specifically, Beechum asserts that, although the victims identified him as the shooter to the police moments after the incident, neither could identify him as the shooter in court. He further contends that "each affirmatively explained that they indentified Mr. Beechum as the shooter in the moment of the initial police investigation due to mere speculation focusing on the prior conflict between [Beechum] and [T.T.], not based on having seen the alleged crime."

¶6 Beechum contends the discrepancy between the victims' testimony at trial and the victims' statements to police immediately after the shooting rendered the evidence insubstantial. But conflicting testimony does not render evidence insubstantial. *See State v. Toney*, 113 Ariz. 404, 408, 555 P.2d 650, 654 (1976). Rather, it is for the jury to weigh the evidence, resolve the conflicts in the evidence, and assess the credibility of witnesses. *State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005). We do not reweigh the evidence; indeed, "[i]f conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the defendant." *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

¶7 To address the victims' recanted identification, the state relied on testimony from Detective Palmer and Officer Watson that T.T. and P.G. advised police that Beechum had fired a weapon at the vehicle in which she and P.G. were sitting. Both T.T. and P.G. also testified that they identified Beechum as the shooter on the night of the offense. It was for the jury to determine how the victims' same-day identification of Beechum, along with other evidence, should be weighed against their failure to identify him at trial. *See State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004) (resolving conflicts in evidence and assessing credibility of witnesses is purview of jury). The court did not err in denying the Rule 20 motion in this case. *See id.*

¶8 Beechum also contends that there was no physical evidence, specifically a gun, linking him to the crime. He overlooks, however, direct and circumstantial evidence that supported the verdicts. *See West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191. The state introduced photographs of the automobile driven by T.T. and P.G., which showed three bullet holes on the exterior of the vehicle. In addition, Beechum's friend, O.S., testified that the two were hanging out at O.S.'s mother's house on the evening the shooting occurred. O.S. further testified that he went into the house to use the restroom and "heard something outside going on" and thought he "heard a few fireworks or something." Upon stepping outside, O.S. saw a vehicle pulling away, and heard one of its occupants yelling his name. He also observed Beechum "walking off," presumably to "his nana's house." The victims also testified that T.T. and Beechum had engaged in a conflict in the past, lending support to their initial impression that Beechum was the shooter.

¶9 To the extent Beechum's arguments on appeal essentially ask us to reweigh the evidence, we decline to do so. *See Lee*, 189 Ariz. at 603, 944 P.2d at 1217. Rather, when viewed in the light most favorable to sustaining Beechum's convictions, there was substantial evidence from which a jury could find Beechum guilty of the offenses beyond a reasonable doubt. *See West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191.

Jury Instructions

¶10 Beechum next argues the trial court erred in instructing the jury because it outlined "three types of assault pursuant to A.R.S. § 12-1203," constituting "separate offenses," and "it is unknown whether the jury was unanimous as to a particular theory of assault." Because Beechum did not object to the assault instruction at trial he has forfeited review for all but fundamental error. *State v. Schrock*, 149 Ariz. 433, 440, 719 P.2d 1049, 1056 (1986). To prevail under the fundamental-error standard of review, Beechum "must establish both that fundamental error exists and that the error in his case caused him prejudice." *State v. Henderson*, 210 Ariz. 561, ¶ 20, 115 P.3d 601, 607 (2005).

¶11 The state charged Beechum with two counts of assault under A.R.S. § 13-1203(A)(2), "[i]ntentionally placing another person in reasonable apprehension of imminent physical injury." Each count was aggravated by Beechum's use of "a deadly weapon or dangerous instrument" pursuant to A.R.S. § 13-1204(A)(2). At the close of trial, the court instructed the jury on aggravated assault as follows:

> The crime of aggravated assault requires proof of the following:
>
> First, that the defendant committed an assault, which is defined underneath, and we'll get to that in a moment. And the assault was aggravated by at least one of the following factors:
>
> The defendant used a deadly weapon or dangerous instrument.
>
> Again, referring back to that first element, that you have to find first that the State[] proves an assault, the definition of assault is as follows:

> It requires proof that the defendant intentionally, knowingly or recklessly caused physical injury to another person;
>
> Or intentionally put another person in reasonable apprehension of immediate physical injury;
>
> Or knowingly touched another person with the intent to injure, insult or provoke that person.

¶12 Beechum now argues for the first time on appeal that he could have been found by the jury to have committed assault in more than one manner. Beechum contends "the evidence presented to the jury could have caused some jurors to believe that [Beechum] 'intentionally' put the victims in reasonable apprehension of immediate physical injury or that he 'knowingly touched' the victims 'with the intent to injure, insult, or provoke' them." He cites *State v. Mathews*, 130 Ariz. 46, 633 P.2d 1039 (App. 1981), for the proposition "that a 'touching' does not require person-to-person contact" and asserts that "[t]he entry of the bullets into the car occupied by the victims could have led to a non-unanimous verdict."

¶13 Beechum's reliance on *Mathews* is misplaced. In *Mathews*, a defendant struck a peace officer with urine. *Id.* at 49, 633 P.2d at 1042. This court found "that throwing a substance, such as human urine, onto the person of another is 'touching' within the meaning of A.R.S. § 13-1203(A)(3) and constitutes the crime of assault in Arizona." *Id.* Here, as Beechum concedes, the bullets struck the victims' vehicle, but did not strike either victim. Beechum appears to contend that a vehicle should be treated as an extension of the person for purposes of "touching" under § 13-1203(A)(2). But he cites to no authority, and we are aware of none, that supports such a contention.

¶14 In sum, there was no risk of non-unanimous verdicts as the facts established Beechum could only have been convicted of assaults pursuant to § 13-1203(A)(2), as alleged in the indictment, for

"[i]ntentionally placing another person in reasonable apprehension of imminent physical injury." Accordingly, there was no error, fundamental or otherwise, when the trial court instructed the jury on the three types of assault underlying the aggravated assault offenses.

Disposition

¶15 For the foregoing reasons, we affirm Beechum's convictions and sentences.